## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

GLOBALTAP, LLC,	
Plaintiff,	) )
vs.	) No. 1:18-cv-05383
PETERSEN MANUFACTURING CO. INC., CHRIS PETERSEN, MIKE SIEMER, W.W. GRAINGER, INC., ZORO TOOLS, INC., PARK N'POOOL, INC., NEOBITS, INC., AND CAREFORDE SAFETY, INC.	) ) Hon. Judge Charles ) Charles Norgle ) )
Defendants.	)

# Plaintiff's Motion for Entry of Default Judgment against Defendant, Park n' Pool, Inc.

Plaintiff, GlobalTap, LLC, through its undersigned counsel, Patterson Law Firm, LLC, and for its Motion for Entry of Default Judgment against Defendant, Park n' Pool, Inc., pursuant to Federal Rules of Civil Procedure 55(a) and 55(b)(2), states as follows:

#### Facts

- 1. Plaintiff filed its Verified Complaint on August 8, 2018, asserting claims against several defendants. (Dkt. # 1.)
- 2. As set forth in Plaintiff's Verified Complaint, Plaintiff possesses two design patents related to the design of free-standing outdoor water bottle filling stations: D634,394 S ("'394 Patent") and D646,348 S ("'348 Patent"). (Dkt. # 1 at ¶¶ 23-28.)

- 3. Plaintiff also owns two registered service marks, identified as the Water Drop Mark (Registration No. 4,775,089) and the Word Mark (Registration No. 4,920,350) in Plaintiff's Complaint. (Dkt. # 1 at ¶¶ 29-31.)
- 4. Count II of Plaintiff's Verified Complaint asserts against Park n' Pool, among others, infringement of the '394 Patent. Count IV of Plaintiff's Verified Complaint asserts against Park n' Pool and Careforde, among others, infringement of the '348 Patent. (Dkt. # 1 at Counts II and IV.)
- 5. Count VI of Plaintiff's Verified Complaint asserts against Park n' Pool, among others, several Lanham Act violations. Specifically, Park n' Pool has used and continues to use Plaintiff's Word Mark and Water Drop Mark on products sold in the United States, without license, consent, or other authorization, and in relation to the marketing, promotion, or advertising of the infringing products, including, but not limited to, promoting the products as genuine GlobalTap products and including the Word Mark and Water Drop Mark on the products, manuals, and marketing materials. (Dkt. # 1 at ¶ 118.)
- 6. This unauthorized use of the Word Mark and Water Drop Mark is likely to confuse consumers because it is used in conjunction with GlobalTap's patented designs, as well as other designs developed by GlobalTap. (Dkt. # 1 at ¶ 119.)

- 7. Park n' Pool's use of Plaintiff's Word Mark and Water Drop Mark in conjunction with GlobalTap's designs amounts to counterfeiting, in that each of these Defendants is selling identical or substantially indistinguishable products under the GlobalTap name and including the Word Mark and Water Drop Mark without Plaintiff's license, consent, or authorization. (Dkt. # 1 at ¶ 120.)
- 8. Park n' Pool acted and is acting willfully in disregard of Plaintiff's rights. (Dkt. # 1 at ¶ 120.)
- 9. Park n' Pool was served with a Summons and the Verified Complaint in this matter on October 8, 2018. See Affidavit of Peter Evans, attached hereto as Exhibit A at ¶ 5.
- 10. As reflected in the Court's docket, it has not appeared or filed a responsive pleading. See Exhibit A at ¶ 7.

#### **Analysis**

- 11. This Court properly has jurisdiction over the claims raised against Park n' Pool pursuant to 28 U.S.C. §§ 1331 and 1338(a), which grants the district courts "original jurisdiction of any civil action arising under any Act of Congress relating to patents . . . and trademarks."
- 12. This Court properly has jurisdiction over Park n' Pool pursuant to Federal Rule of Civil Procedure 4 and 735 ILCS 5/2-209(a), because Park n' Pool has transacted business in Illinois by virtue of its advertising and sales of products, including products marketed as GlobalTap products,

to individuals and entities located in Illinois. See uBID, Inc. v. GoDaddy Grp., Inc., 623 F.3d 421, 423-24 (7th Cir. 2010).

- 13. Pursuant to Rule 55(a), "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). As set forth above, Park n' Pool was served on October 8, 2018. Pursuant to Rule 12(a)(1)(A)(i), Defendant was to answer or otherwise plead within 21 days. Park n' Pool has not appeared or filed any responsive pleading. Accordingly, Plaintiff requests for entry of default against Park n' Pool.
- 14. Pursuant to Rule 55(b)(2), the Court may enter a default judgment against the defaulting parties, which establishes as a matter of law that the defaulting defendants are liable on each claim asserted against them. United States v. Di Mucci, 879 F.2d 1488, 1497 (7th Cir. 1989). In addressing a motion for entry of default judgment, the Court must take as true the factual allegations of the complaint. Black v. Lane, 22 F.3d 1395, 1399 (7th Cir. 1994).
- 15. Plaintiff has alleged that it possesses two valid, protected marks; Park n' Pool is not authorized to use the marks; and their use of the marks is likely to cause confusion among consumers, which is sufficient to establish a claim under the Lanham Act. Bliss Salon Day Spa v. Bliss World, LLC, 268 F.3d 494, 496-97 (7th Cir. 2001).

16. Park n' Pool's infringement is apparent from its website, which markets the counterfeit products to the public. See Exhibits E to Plaintiff's Verified Complaint (Dkt. # 1.) As of December 10, 2018, Park n' Pool continued to list for sale on its website three product models identified as GlobalTap products and including the Word Mark and Water Drop Mark. See https://www.parknpool.com/search-v1610.php?search=water+bottle+filling+station&Search1=find (accessed on Dec. 10, 2018). It does so despite knowledge of Plaintiff's claims.

17. Because Park n' Pool has failed to defend itself in this action, Plaintiff requests an entry of default judgment against it and requests an award of statutory damages as authorized under 15 U.S.C. § 1117(c) for its willful infringement and counterfeiting of Plaintiff's Word Mark and Water Drop Mark, as well as permanent injunctive relief as authorized under 15 U.S.C. § 1116.

#### **Damages**

18. Under 15 U.S.C. § 1117(c), in cases involving counterfeit marks, a plaintiff may elect to receive "not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just." 15 U.S.C. § 1117(c)(1). If the counterfeiting is willful, statutory damages may be awarded of up to "\$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just." 15 U.S.C. § 1117(c)(2).

- 19. Because information regarding Park n' Pool's sales and profits is unavailable due to their failure to appear, statutory damages are appropriate here. Lorillard Tobacco Co. v. S&M Cent. Serv. Corp., No. 03-c-4986, 2004 U.S. Dist. LEXIS 22563, \*9 (N.D. Ill. Nov. 8, 2004). Statutory damages may be awarded without an evidentiary hearing. Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc., No. 03 c 5311, 2008 U.S. Dist. LEXIS 31761, \*11 (N.D. Ill. Apr. 17, 2008). Further, courts have found defaulting defendants to have willfully counterfeited the plaintiff's marks based on the allegations in the complaint. Deckers Outdoor Corp. v. Doe, No. 11 c 10, 2011 U.S. Dist. LEXIS 119448, \*13-15 (N.D. Ill. Oct. 14, 2011).
- 20. Plaintiff, here, requests the Court award a high statutory damages amount. The Court "enjoys wide discretion" in determining a statutory damages award, and may consider factors such as the difficulty in proving actual damages, the circumstances of the infringement, and whether the damages will serve as an effective deterrent. Chi-Boy Music v. Charlie Club, 930 F.2d 1224, 1229 (7th Cir. 1991). A high damages award is also proper when the infringing activity has expansive reach, such as when the counterfeit products are marketed online. Coach, Inc. v. Ocean Point Gifts, No. 12-cv-2254,2010 U.S. Dist. LEXIS 59003, \*15-16 (D.N.J. Jun. 14, 2010) and Burberry Ltd. v. Designers Imports, Inc., No. 07 Civ. 3997, 2010 U.S. Dist. LEXIS 3605, \*28-29 (S.D.N.Y. Jan. 19, 2010). Further, Park n' Pool's infringement is willful, as evidenced by its

continued use of the Water Drop Mark and Word Mark on its website months after this suit was filed.

- 21. Any statutory damages awarded must also serve as a sufficient deterrent to ensure that the guilty party will not continue to infringe and sell counterfeit goods. Sands, Taylor & Wood v. Quaker Oats Co., 34 F.3d 1340, 1348 (7th Cir. 1994).
- 22. Accordingly, for Park n' Pool's willful counterfeiting and unauthorized use of Plaintiff's Word Mark and Water Drop Mark, Plaintiff requests a statutory damages award of \$200,000 per mark, as permitted by 15 U.S.C. § 1117(c), or a total of \$400,000, as well as permanent injunctive relief.

WHEREFORE, Plaintiff, GlobalTap, LLC, respectfully requests this Honorable Court enter default and default judgment against Defendant, Park n' Pool, Inc., award statutory damages in the amount of \$400,000 pursuant to 15 U.S.C. § 1117(c), and grant Plaintiff permanent injunctive relief prohibiting defendant from selling counterfeit GlobalTap products, and grant such other relief as the Court deems proper under the circumstances.

Dated: 12/10/2018 Respectfully submitted,

/s/Peter J. Evans Kristi L. Browne Peter J. Evans Patterson Law Firm, LLC 200 W. Monroe Street Suite 2025 Chicago, Illinois 60606

Tel.: 312-223-1699 Fax: 312-223-8549

kbrowne@pattersonlawfirm.com pevans@pattersonlawfirm.com

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

GLOBALTAP, LLC,	
Plaintiff, )	
vs.	No. 1:18-cv-05383
PETERSEN MANUFACTURING CO. INC., CHRIS PETERSEN, MIKE SIEMER, W.W. GRAINGER, INC., ZORO TOOLS, INC., PARK N'POOOL, INC., NEOBITS, INC., AND CAREFORDE SAFETY, INC.	Hon. Judge Charles Charles Norgle
Defendants.	

#### Affidavit of Peter J. Evans

- I, Peter J. Evans, hereby state and aver to the following facts under penalty of perjury:
- 1. My name is Peter J. Evans. I am over the age of eighteen and, if called to testify, could competently testify to each of the facts set forth herein.
- 2. I am an attorney with the Patterson Law Firm, LLC, which represents Plaintiff, GlobalTap, LLC in this matter.
- 3. On or about August 8, 2018, Plaintiff filed its Verified Complaint in this case, asserting certain claims against, among others, Defendant, Park n' Pool, Inc.
  - 4. Summons was issued to Park n' Pool, Inc. on the same day.

Complaint on October 8, 2018 at 1:50pm by leaving a copy of same with

5. Park n' Pool, Inc. was served with the Summons and Verified

Brenda Fonner, President. See Affidavit of Service, attached hereto as

Exhibit 1.

6. As of December 10, 2018, Park n' Pool, Inc. has not appeared or

filed any responsive pleading in this matter.

7. I have received no correspondence from Park n' Pool, Inc., or from

anyone acting on their behalf.

8. As of December 10, 2018, Park n' Pool continued to advertise

counterfeit GlobalTap products on its website.

FURTHER AFFIANT SAYETH NAUGHT.

Date: December 10, 2018

By: Pel Cur Peter J. Evans

# UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

GlobalTap,	LLC,	
Plaintiff	ĉ(s),	Case No.: 1:18 CV 5383
VS.		AFFIDAVIT OF SERVICE
Petersen Ma Defenda	anufacturing Co. Inc., et al	
KATHRY	N F. KINZIE	, being first duly sworn on oath, deposes and states the
following: I am over the Illinois Depa service of the	e age of 18 and not a party to rtment of Financial and Profession of Summons in a Civi	this action. I am an agent of ATG LegalServe, Inc., fessional Regulation number 117.001494. I attempted il Case; Verified Complaint to Park n' Pool, Inc., 4450 resulting in the following:
X	AUTHORIZED SERVICE Verified Complaint with:	CE: By leaving a copy of the Summons in a Civil Case;
	1 2 0	.an individual of the to accept on behalf of the entity/respondent/witness on:
	listed along with a descript	ollowing reasons with the <b>DATE</b> and <b>TIME</b> of each attempt tion of the attempt (attach a separate sheet if needed):
_/_/_		
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A description	on of person with whom the	documents were left is as follows:
Sex: F Rac	ce: WHITE Appro	x. Age: 45 Height 5 7 11 Weight: 150 Hair: BROWN
Noticeable Features/No	otes BROWN EYES, GLAS	SSES
The undersi	gned verifies that the statem	ents set forth in this Affidavit of Service are true and correct.
	sworn to before me on lay of OCTOBER,	X Xateyn F. Kinzie  KATHRYN F. KINZIE  (Print Name)
		*206677 <b>*</b>

FLOYD CARRINGTON WRIGHT NOTARY PUBLIC Commonwealth of Virginia Reg. #7299698 My Commission Expires 12/31/2022

Law Firm Ref #:

AO279,MASON

# United States District Court Northern District of Illinois - CM/ECF LIVE, Ver 6.2.2 (Chicago) CIVIL DOCKET FOR CASE #: 1:18-cv-05383

GlobalTap, LLC v. Petersen Manufacturing Co. Inc. et al Assigned to: Honorable Charles R. Norgle, Sr

Cause: 35:271 Patent Infringement

Date Filed: 08/08/2018
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

#### **Plaintiff**

GlobalTap, LLC

#### represented by Peter Joseph Evans

Patterson Law Firm LLC 200 W. Monroe Suite 2025 Chicago, IL 60606 (312) 223-1699 Email: pevans@pattersonlawfirm.com

Email: pevans@pattersonlawfirm.com ATTORNEY TO BE NOTICED

#### Kristi L. Browne

Patterson Law Firm PC 200 W. Monroe 2025 Chicago, IL 60606 (312) 223-1699

Email: kbrowne@pattersonlawfirm.com *ATTORNEY TO BE NOTICED* 

V.

#### **Defendant**

Petersen Manufacturing Co. Inc.

#### represented by Peter D. Sullivan

Hinshaw & Culbertson LLP
151 N. Franklin Street
Suite 2500
Chicago, IL 60606
(312) 704-3102
Email: psullivan@hinshawlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

#### Mark K. Suri

Hinshaw & Culbertson LLP 151 N. Franklin Street Suite 2500

**EXHIBIT 2** 

Chicago, IL 60606 (312) 704-3000 Email: msuri@hinshawlaw.com ATTORNEY TO BE NOTICED

#### **Terrence Patrick McAvoy**

Hinshaw & Culbertson LLP
151 N. Franklin Street
Suite 2500
Chicago, IL 60606
(312) 704-3000
Email: tmcavoy@hinshawlaw.com
ATTORNEY TO BE NOTICED

#### **Defendant**

**Chris Petersen** 

#### represented by Peter D. Sullivan

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

#### Mark K. Suri

(See above for address)

ATTORNEY TO BE NOTICED

### **Terrence Patrick McAvoy**

(See above for address)

ATTORNEY TO BE NOTICED

#### **Defendant**

Mike Siemer

#### represented by Peter D. Sullivan

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

#### Mark K. Suri

(See above for address)

ATTORNEY TO BE NOTICED

#### **Terrence Patrick McAvoy**

(See above for address)

ATTORNEY TO BE NOTICED

#### **Defendant**

W.W. Grainger, Inc.

#### represented by James J. Lukas, Jr

Greenberg Traurig, LLP 77 West Wacker Drive Suite 3100 Chicago, IL 60601 (312) 456-1038

Email: lukasj@gtlaw.com LEAD ATTORNEY ATTORNEY TO BE NOTICED

#### **Defendant**

Zoro Tools, Inc.

represented by James J. Lukas, Jr

(See above for address) *LEAD ATTORNEY* 

ATTORNEY TO BE NOTICED

#### **Defendant**

Park n' Pool, Inc.

#### **Defendant**

Neobits, Inc.

#### **Defendant**

Careforde Safety, Inc.

#### **Counter Claimant**

**Chris Petersen** 

represented by Peter D. Sullivan

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

#### Mark K. Suri

(See above for address)
ATTORNEY TO BE NOTICED

# **Terrence Patrick McAvoy**

(See above for address)

ATTORNEY TO BE NOTICED

#### **Counter Claimant**

Petersen Manufacturing Co. Inc.

represented by Peter D. Sullivan

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

# Mark K. Suri

(See above for address)
ATTORNEY TO BE NOTICED

#### **Terrence Patrick McAvoy**

(See above for address)

ATTORNEY TO BE NOTICED

# **Counter Claimant**

**Mike Siemer** 

represented by Peter D. Sullivan

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Mark K. Suri

(See above for address)

ATTORNEY TO BE NOTICED

**Terrence Patrick McAvoy** 

(See above for address)

ATTORNEY TO BE NOTICED

V.

**Counter Defendant** 

GlobalTap, LLC

represented by Peter Joseph Evans

(See above for address)

ATTORNEY TO BE NOTICED

Kristi L. Browne

(See above for address)

ATTORNEY TO BE NOTICED

#	Docket Text	
<u>24</u>	MINUTE entry before the Honorable Charles R. Norgle:Status hearing held on 10/12/2018. Agreed Written Status Report is due on 12/5/2018. Mailed notice (ewf, ) (Entered: 10/12/2018)	
<u>23</u>	STIPULATION of Dismissal of Defendant NeoBits, Inc., with prejudice (Attachments: # 1 Notice of Filing)(Evans, Peter) (Entered: 10/09/2018)	
<u>22</u>	ANSWER to counterclaim <i>and affirmative defenses</i> by GlobalTap, LLC (Attachments: # 1 Notice of Filing Notice of Filing)(Evans, Peter) (Entered: 10/08/2018)	
21	MINUTE entry before the Honorable Charles R. Norgle: Joint Motion for a Stay of the Case as to Defendants W. W. Grainger, Inc. and Zoro Tools, Inc. 18 is granted. The parties are not required to appear before the court on Friday, September 21, 2018 Mailed notice (ewf, ) (Entered: 09/20/2018)	
<u>20</u>	ANSWER to Complaint <i>and Affirmative Defenses</i> , COUNTERCLAIM filed by Chris Petersen, Petersen Manufacturing Co. Inc., Mike Siemer against GlobalTap, LLC. by Chris Petersen, Petersen Manufacturing Co. Inc., Mike Siemer(Sullivan, Peter) (Entered: 09/17/2018)	
<u>19</u>	NOTICE of Motion by James J. Lukas, Jr for presentment of motion to stay 18 before Honorable Charles R. Norgle Sr. on 9/21/2018 at 09:30 AM. (Lukas, James) (Entered: 09/17/2018)	
	23 22 21 20	

09/17/2018	<u>18</u>	MOTION by Defendants W.W. Grainger, Inc., Zoro Tools, Inc. to stay [JOINT] (Lukas, James) (Entered: 09/17/2018)	
09/05/2018	<u>17</u>	NOTICE by Peter Joseph Evans of Change of Address (Evans, Peter) (Entered: 09/05/2018)	
09/05/2018	<u>16</u>	NOTICE by Kristi L. Browne of Change of Address (Browne, Kristi) (Entered: 09/05/2018)	
08/30/2018	<u>15</u>	STIPULATION regarding motion for preliminary injunction, motion to expedite 7 (Sullivan, Peter) (Entered: 08/30/2018)	
08/17/2018	14	ATTORNEY Appearance for Defendants Chris Petersen, Petersen Manufacturing Co. Inc., Mike Siemer by Mark K. Suri (Suri, Mark) (Entered: 08/17/2018)	
08/17/2018	<u>13</u>	ATTORNEY Appearance for Defendants Chris Petersen, Petersen Manufacturing Co. Inc., Mike Siemer by Terrence Patrick McAvoy (McAvoy, Terrence) (Entered: 08/17/2018)	
08/17/2018	12	ATTORNEY Appearance for Defendants Chris Petersen, Petersen Manufacturing Co. Inc., Mike Siemer by Peter D. Sullivan (Sullivan, Peter) (Entered: 08/17/2018)	
08/17/2018	11	MINUTE entry before the Honorable Charles R. Norgle: Motion hearing held on 8/17/2018. Motion for preliminary injunction and motion to expedite 7 are taken under advisement. Counsel will submit an agreed order. A status hearing is set for 10/12/2018 at 10:00 a.m. Mailed notice (ewf, ) (Entered: 08/17/2018)	
08/17/2018	<u>10</u>	ATTORNEY Appearance for Defendants W.W. Grainger, Inc., Zoro Tools, Inc. by James J. Lukas, Jr (Lukas, James) (Entered: 08/17/2018)	
08/09/2018	9	MAILED Patent report to Patent Trademark Office, Alexandria VA (ek, ) (Entered: 08/09/2018)	
08/08/2018	8	NOTICE of Motion by Kristi L. Browne for presentment of motion for preliminary injunction, motion to expedite 7 before Honorable Charles R. Norgle Sr. on 8/17/2018 at 09:30 AM. (Browne, Kristi) (Entered: 08/08/2018)	
08/08/2018	7	MOTION by Plaintiff GlobalTap, LLC for preliminary injunction, MOTION by Plaintiff GlobalTap, LLC to expedite <i>discovery</i> (Attachments: # 1 Exhibit A) (Browne, Kristi) (Entered: 08/08/2018)	
08/08/2018		SUMMONS Issued as to Defendants Careforde Safety, Inc., Neobits, Inc., Park n' Pool, Inc., Chris Petersen, Petersen Manufacturing Co. Inc., Mike Siemer, W.W. Grainger, Inc., Zoro Tools, Inc. (lw, ) (Entered: 08/08/2018)	
08/08/2018		CASE ASSIGNED to the Honorable Charles R. Norgle, Sr. Designated as Magistrate Judge the Honorable Michael T. Mason. (pj, ) (Entered: 08/08/2018)	
08/08/2018	6	Notice of Claims by GlobalTap, LLC (Browne, Kristi) (Entered: 08/08/2018)	
08/08/2018	<u>5</u>	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by GlobalTap, LLC re complaint, <u>1</u> (Browne, Kristi) (Entered: 08/08/2018)	
08/08/2018	4		

		ATTORNEY Appearance for Plaintiff GlobalTap, LLC by Peter Joseph Evans (Evans, Peter) (Entered: 08/08/2018)	
08/08/2018	<u>3</u>	ATTORNEY Appearance for Plaintiff GlobalTap, LLC by Kristi L. Browne (Browne, Kristi) (Entered: 08/08/2018)	
08/08/2018	<u>2</u>	CIVIL Cover Sheet (Browne, Kristi) (Entered: 08/08/2018)	
08/08/2018	1	COMPLAINT filed by GlobalTap, LLC; Jury Demand. Filing fee \$ 400, receipt number 0752-14794759. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Browne, Kristi) (Entered: 08/08/2018)	

PACER Service Center			
Transaction Receipt			
11/29/2018 14:58:25			
PACER Login:	PattersonLF:2645123:0	Client Code:	
Description:	Docket Report	Search Criteria:	1:18-cv- 05383
Billable Pages:	5	Cost:	0.50